



KENYON & KENYON  
1500 K STREET NW  
SUITE 700  
WASHINGTON DC 20005

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**SEP 21 2005**

**OFFICE OF PETITIONS**

In re Application of  
LORTZ  
Application No. 09/208,064  
Filed: December 9, 1998  
Attorney Docket No. 2207/6018

DECISION  
ON PETITION

This is a decision on a renewed petition under 37 CFR 1.137(b), filed June 6, 2005, to revive the above-identified application.

The petition is **GRANTED**.

The above-identified application became abandoned for failure to reply in a timely manner to the non-final Office action mailed January 4, 2001, which set a shortened statutory period for reply of three (3) months. No extensions of time under the provisions of 37 CFR 1.136(a) were obtained. Accordingly, the application became abandoned on April 5, 2001.

A subsequent communication, in the form of a second non-final action, was mailed to Applicant on August 30, 2004.<sup>1</sup> The examiner had no procedural authority with respect to this abandoned application on or after April 5, 2001. Lorenz v. Finkl, 333 F.2d 885, 891 142 USPQ 26, 30 (CCPA 1964). It follows that the examiner was without authority to have provided petitioner with an opportunity to ratify the belated communication filed December 28, 2004, pursuant to 37 CFR 1.135(c). Therefore, this application became abandoned on April 5, 2001 for failing to timely respond within the period set by the non-final action dated January 4, 2001. Nonetheless, the non-final office action dated August 30, 2004 is substantially identical to the non-final office action dated October 1, 2001, and in effect, petitioner's reply filed with the renewed petition in the form of an Amendment has responded to the non-final action dated January 4, 2001.

Thus, the petition satisfies the conditions for revival pursuant to the provisions of 37 CFR 1.137(b) in that (1) the reply in the form of an Amendment; (2) the petition fee of \$1500; and (3) the required statement of unintentional delay have been received. Accordingly, the reply to the non-final action of October 4, 2001 is accepted as having been unintentionally delayed.

The second petition fee charged of \$1500 was unnecessary and will be refunded to petitioner's deposit account as requested in the renewed petition.

Additionally to complete petitioner's records, a courtesy copy of the non-final action dated January 4, 2001 has been included with this decision.

Telephone inquiries concerning this decision should be directed to Denise Pothier at (571) 272-4787.

<sup>1</sup> This non-final action has not been scanned. PALM entry labels this correspondence "MAIL MISCELLANEOUS COMMUNICATION TO APPLICANT."

The application matter is being forwarded to Technology Center Art Unit 2611.

A handwritten signature in cursive script that reads "Frances Hicks".

Frances Hicks  
Petitions Examiner  
Office of Petitions

Enc: Office Action dated 1/04/01  
Notice of Reference cited (PTO-892)  
Notice of Draftsperson's Patent Drawing Review (PTO-948)